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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/586,077

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Lothar Ginzel

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EXAMINER

O BRIEN, JEFFREY D

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/586,077	Applicant(s) GINZEL ET AL.	
	Examiner Jeffrey O'Brien	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(b) because they are incomplete. 37 CFR 1.83(b) reads as follows:

When the invention consists of an improvement on an old machine the drawing must when possible exhibit, in one or more views, the improved portion itself, disconnected from the old structure, **and also in another view, so much only of the old structure as will suffice to show the connection of the invention therewith.**

For purposes of clarity, Examiner suggests including a prior art figure showing either a prior art door closer and it's means of attachment to a door, or a door structure clearly identifying the means with which it would be connected to the invention as claimed.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or

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“New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 18-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tillmann et al. (US 4,658,468) herein referred to as ‘468 in view of Fischbach et al. (US 2003/0213092) herein referred to as ‘092.

8. For Claim 18, ‘468 discloses a door closer comprising: a housing (Fig. 2: 16); a shaft (13) supported in the housing and connectable to a door; a brake piston (37) supported in the housing and charging the shaft, the brake piston and the housing defining a first space (38) away from the shaft; a blocking member (28, 26); a first spring (29) loading the blocking member and extending orthogonally from the housing (wherein

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the first spring extends orthogonally with respect to the end of the housing); wherein the shaft is lockable in a position by the blocking member. '468 does not disclose a pump for providing at least one of the functions of pumping brake fluid to the first space and pumping brake fluid from the first space, the pump being disposed in a second space formed between the housing and the first spring, wherein the shaft is lockable in a position by the blocking member. '092 teaches a door closer having a pump (Fig. 7: 44) for providing at least one of the functions of pumping brake fluid to a first space (9) and pumping brake fluid from the first space, the pump being disposed in a second space formed between the housing and the first spring. It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the pump of '092 to the door closer of '468 in order to allow for motorized opening assistance of the door.

9. '468 in view of '092 further discloses wherein the housing has a longitudinal housing direction (as seen in Fig. 1 of '468). '468 in view of '092 does not teach wherein the first spring extends orthogonally to the longitudinal housing direction. It would have been obvious to one of ordinary skill in the art at the time of the invention to rearrange the spring member so as to be orthogonal to the longitudinal housing direction as it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. See also, *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975). See also MPEP 2144.04.

10. For Claim 19, '468 discloses the door closer of claim 18, except wherein the door closer further comprises a drive motor for driving the pump, the drive motor being disposed in the second space. '092 further teaches a drive motor (45) for driving the

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pump, the drive motor being disposed in the second space. It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the pump and motor of '092 to the door closer of '468 in order to allow for motorized opening assistance of the door.

11. For Claims 20-21, '468 discloses the door closer of claim 18, except further comprising a tube-shaped bushing which is detachably connected to the housing and extends orthogonally therefrom, the first spring being supported in the tube-shaped bushing. '468 instead discloses the first spring extending orthogonally with respect to the end of the housing and wherein the spring is directly mounted in the housing. Examiner takes official notice that it is old and well known to use a bushing in order to reduce friction between a moving piece such as a spring and a housing. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have applied a bushing to the housing and spring of '468 in order to reduce friction and wear on the housing and spring.

12. Examiner's assertion of official notice from the Office Action Mailed 10/14/2008 with regards to using a bushing in order to reduce friction between a moving piece such as a spring and a housing is now taken to be admitted prior art due to Applicant's failure to traverse said official notice (see MPEP § 2144.03).

13. Further, '468 in view of ' 092 does not teach wherein the tube shaped bushing extends orthogonally to the longitudinal housing direction. It would have been obvious to one of ordinary skill in the art at the time of the invention to rearrange the tube shape bushing and spring member so as to be orthogonal to the longitudinal housing direction

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as it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. See also, *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975). See also MPEP 2144.04.

14. For Claims 22-23, '468 in view of '092 teaches the door closer of claim 21, except further comprising a casing detachably connected to the housing and the tube-shaped bushing, the pump and the drive motor being received in the casing. '468 instead teaches the pump and drive motor housed in an integral compartment with the housing of the door closer. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to separate the pieces of the housing to allow for the motor and pump to be in a separate casing in order to better isolate the pump and motor from the hydraulic fluid of the door closer, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

15. For Claim 24, '468 further discloses the door closer of claim 20, wherein the blocking member comprises a cup-shaped insert (28) displaceably supported in the housing.

16. For Claim 25, '468 discloses the door closer of claim 24, wherein the cup-shaped insert has a bottom (left side of 28 in Fig. 2) facing the shaft (13), the blocking member further comprising a support (27) which protrudes from the bottom of the cup-shaped insert into the housing and has a roller (26) cooperating with the shaft (13).

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17. For Claim 26, '468 discloses the door closer of claim 24, wherein the first spring (29) is disposed in the integral housing containing the spring and loads the cup-shaped insert in the direction of the housing/shaft.

18. For Claim 27, '468 in view of '092 discloses the door closer of claim 24, except further comprising a friction or wear reducing element between the tube-shaped bushing and the cup-shaped insert. Examiner takes official notice that it is old and well known to use a bushing and a friction or wear reducing element (such as oil) in order to reduce friction between a moving piece such as a spring and a housing. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have applied a bushing to the cup and spring of '468 in order to reduce friction and wear on the housing and spring.

5. Examiner's assertion of official notice from the Office Action Mailed 10/14/2008 with regards to using a bushing and a friction or wear reducing element (such as oil) in order to reduce friction between a moving piece such as a spring and a housing is now taken to be admitted prior art due to Applicant's failure to traverse said official notice (see MPEP § 2144.03).

19. For Claim 28, '468 further teaches the door closer of claim 18, further comprising an eccentric disc (22) mounted on the shaft, and a second spring (44) which charges the brake piston (37) toward the eccentric disc.

20. For Claim 29, '468 further teaches the door closer of claim 18, except further comprising a seal between the housing and the brake piston. '092 further teaches a seal between the housing and a brake piston (as seen in Fig. 7).

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21. For Claim 30, '468 further discloses the door closer of claim 18, further comprising a valve arrangement (46, 48), and wherein the brake piston is lockable in a predetermined position by means of the valve arrangement.

22. For Claim 31, '468 discloses the door closer of claim 30, wherein the valve arrangement comprises a regulating valve (46), and a shut-off valve (48) which affects flow of the regulating valve.

23. For Claim 32, '468 discloses the door closer of claim 31, wherein the shut-off valve (48) automatically opens at a predetermined pressure (column 6, lines 48-49).

24. For Claim 33, '468 discloses the door closer of claim 31, except wherein the shut-off valve is operable to be electro-magnetically actuated. Examiner takes official notice that electromagnetically controlled valves are old and well known. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have replaced the shut-off valve in '468 with an electromagnetically actuated control valve to control the door closer electronically.

25. Examiner's assertion of official notice from the Office Action Mailed 10/14/2008 with regards to electromagnetically controlled valves is now taken to be admitted prior art due to Applicant's failure to traverse said official notice (see MPEP § 2144.03).

26. For Claim 34, '468 discloses the door closer of claim 28, wherein the brake piston (37) comprises a roller (35) which engages the eccentric disc (22).

27. For Claim 35, '468 discloses the door closer of claim 18, wherein the brake piston is coupled to the shaft by means of a rocker (44, wherein an oscillating spring is

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considered a device capable of operating with a rocking motion) and an eccentric disc (22).

Response to Arguments

28. Applicant's arguments filed 1/14/2009 have been fully considered but they are not persuasive.

29. Applicant's arguments are with respect to newly added limitations. These limitations have been addressed in the above rejection. The limitations amount to a rearrangement of parts of the prior art. A mere rearrangement of parts is held to be obvious to one of ordinary skill in the art. See also MPEP 2144.04.

Conclusion

30. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey O'Brien whose telephone number is (571)270-3655. The examiner can normally be reached on Monday through Friday 8:00am-5:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached on 571-272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Victor Batson/
Supervisory Patent Examiner, Art Unit 3677

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